

TRANSPORTATION SERVICE HUMAN RESOURCES POLICY

**SUBJECT: PROCESSING AND INVESTIGATING
COMPLAINTS OF DISCRIMINATION**

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SECTION: 11D
Issued: 7/01/1993
Revision No. 2
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Effective: 9/1/2004

APPROVED: _____
Deputy Secretary, Department of Transportation

1. POLICY

- 1.1 It is our policy that all employees and applicants for employment will receive fair and impartial treatment in all phases of employment.

2. PURPOSE

- 2.1 It is our purpose to provide a process for investigating complaints of discrimination filed against the Maryland Department of Transportation or any of its Administrations.

3. APPLICABILITY

- 3.1 This policy is applicable to all Administrations of the Maryland Department of Transportation as defined in Transportation Service Regulation 11.02.01.02B.

4. PROCESS OVERVIEW

- 4.1 A flowchart of the process is attached to this policy. This flowchart is to be used as a reference and is not intended to take the place of the contents of this policy.

5. DEFINITIONS

- 5.1 Administration means the:
5.1.1 Maryland Aviation Administration,
5.1.2 Motor Vehicle Administration,
5.1.3 State Highway Administration,
5.1.4 Maryland Transportation Authority,
5.1.5 Maryland Port Administration,
5.1.6 Maryland Transit Administration; and
5.1.7 The Secretary's Office.
- 5.2 Complainant - Any person who files a complaint of discrimination.
- 5.3 Conciliation Process - An attempt to resolve the issues between the parties and enter into a settlement agreement.

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5.4 Employment Discrimination

5.4.1 To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment, because of such individual's race, color, creed, religion, political affiliation or belief, age, marital status, sexual orientation, gender, national origin, genetic information, or physical or mental disability.

5.4.2 To limit, segregate, or classify its employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise affect the individual's status as an employee, because of such individual's race, color, creed, religion, political affiliation or belief, age, marital status, sexual orientation, gender, national origin, genetic information, or physical or mental disability.

5.4.3 To abuse, intimidate, harass, coerce, interfere with, institute reprisal or retaliate against or otherwise defame an employee or applicant for employment because of such individual's race, color, creed, religion, political affiliation or belief, age, marital status, sexual orientation, gender, national origin, genetic information, or physical or mental disability.

5.5 Equal Opportunity Officer - An individual in each Administration who is responsible for investigating complaints of discrimination.

5.6 Fair Practices Officer - The Secretary's designee who is charged with departmental responsibility for the coordination of activities regarding fair employment practices.

5.7 Level of Management - This term includes any supervisor, section manager, director or any other person having control or supervision directly or indirectly over an employee of the Department.

5.8 Mediation Process - A process that attempts to resolve differences through the use of an objective individual acting as an intermediary between the opposing parties.

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- 5.9 No Probable Cause - A decision that a preponderance of the evidence does not support the conclusion that the respondent engaged in the alleged discriminatory act(s).
- 5.10 Probable Cause - A decision that a preponderance of the evidence supports the conclusion that the respondent engaged in the alleged discriminatory act(s).
- 5.11 Respondent - The person or unit within the Department against whom the allegation of discrimination has been made.

6. GENERAL

- 6.1 All employees and applicants for employment will receive fair and impartial treatment in all phases of employment. Every employee and applicant for employment has the right to file a complaint alleging discrimination in employment. Any employee or applicant for employment who files a complaint, testifies, assists, or participates in any phase of an investigation will be free from restraint, intimidation, harassment, interference, coercion, or reprisal.
- 6.2 All employees and all levels of management in the Department will cooperate fully with the Equal Opportunity (EO) Officer by furnishing information as requested regarding policies, regulations, and procedures that have a bearing on the complaint of discrimination. The Equal Opportunity Officer will determine what is relevant during the investigation of the complaint, but in no event shall any person give privileged information that is confidential as a matter of law.
- 6.3 Any employee who feels discriminated against by any Administration of the Department or level of management may file either a complaint of discrimination as outlined in subsection 6, Filing A Complaint, or may file a grievance in accordance with TSHRS 7I Grievance Procedure, but not both. An applicant for employment may file a complaint in accordance with subsection 6.
- 6.4 The parties may mutually agree to waive any time limitations specified in this policy.

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7. FILING A COMPLAINT

- 7.1 The complainant shall complete a Complaint of Discrimination Form (DTS-39) and forward it to the Equal Opportunity or Fair Practices Office at the Administration against which the allegations are made, or to the Office of Fair Practices in The Secretary's Office. Forms may be obtained from any MDOT Equal Opportunity/Fair Practices Office.
- 7.2 The complaint must be based on discrimination because of race, color, creed, religion, political affiliation or belief, age, marital status, sexual orientation, gender, national origin, genetic information, or physical or mental disability.
- 7.3 The complaint must be filed within the following time limits:
 - 7.3.1 To qualify for appeal rights within the Department of Budget and Management, the complaint must be filed within 30 days from the time the alleged act of discrimination took place or 30 days from the time the complainant had knowledge of the alleged act.
 - 7.3.2 Complaints filed between 31-180 days from the time the alleged act of discrimination took place or 31-180 days from the time the complainant had knowledge of the alleged act will be accepted by the Maryland Department of Transportation.
- 7.4 All complaints must contain the following:
 - 7.4.1 The full name, address and phone number of the complainant.
 - 7.4.2 The full name and address of the Administration in the Department and, if applicable, the full name and address of the person(s) against whom the complaint is made.
 - 7.4.3 A clear and concise statement of the facts constituting the alleged act(s) of discrimination, including when the alleged discriminatory behavior took place.
 - 7.4.4 A statement of how race, color, creed, religion, political affiliation or belief, age, marital status, sexual orientation, gender, national origin, genetic information, or physical or mental disability is believed to have been the basis for the alleged discrimination.

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7.4.5 The signature of the complainant and the date the complaint was filed.

8. ACCEPTANCE OF COMPLAINT

8.1 The Equal Opportunity Officer will accept a complaint for investigation if it meets the requirements as outlined in 7.4 and will counsel the complainant regarding:

8.1.1 The right to file a complaint with the Equal Opportunity/Fair Practices Office of the Administration against which the allegation is made and seek remedy through the investigative procedure or grievance procedure as outlined in TSHRS Grievance Procedure 7I.

8.1.2 The right to file a complaint with the Director, Office of Fair Practices in The Secretary's Office.

8.1.3 The right to file a complaint with other external administrative bodies (i.e., Maryland Commission on Human Relations and the U.S. Equal Employment Opportunity Commission).

8.1.4 The right to amend the complaint to clarify and amplify allegations or to correct technical defects or omissions.

9. INVESTIGATING THE COMPLAINT

9.1 When a complaint is filed with any Administration of the Department, the Equal Opportunity Officer shall contact the complainant and the respondent(s) within ten (10) work days after it has been filed. The Equal Opportunity Officer also shall forward a copy of the complaint to the Director, Office of Fair Practices in the Secretary's Office.

9.1.1 The complainant may choose either investigation or mediation (See Section 13 of this Policy).

9.2 Except in cases of sexual harassment, the Equal Opportunity Officer or designee will conduct an impartial and thorough investigation under the direction of the Fair Practices Officer and prepare a written report within thirty (30) days of the receipt of the complaint. The Equal Opportunity Officer may request that the

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parties waive the 30-day requirement if additional time is needed to complete the investigation and issue the report. The extension may be requested only when there are documented reasons for not meeting the 30-day requirement.

9.2.1 When an alleged incident of sexual harassment is reported, the Equal Opportunity Officer or designee shall conduct an impartial and thorough investigation and issue a written report within fifteen (15) work days of the receipt of the complaint. The Equal Opportunity Officer may request that the parties waive the 15-day requirement if additional time is needed to complete the investigation and issue the report.

9.3 Through the investigation, the Equal Opportunity Officer shall ascertain all facts surrounding the complaint. All records (including personnel records), policies, witnesses, and any other information shall be made available to the Equal Opportunity Officer. The Equal Opportunity Officer shall advise the complainant that the Administration will ensure confidentiality as much as possible. The employees involved in the investigation, including the complainant and witnesses, shall be assured of no retaliation.

9.4 Upon conclusion of the investigation, the Equal Opportunity Officer, under the direction of the Fair Practices Officer, shall prepare an investigative report, which shall provide findings and may make recommendations, under separate cover, if appropriate. The investigative report must be submitted to the Administration's Office of the Attorney General for legal review prior to finalization.

9.4.1 Following legal review, the investigative report shall be submitted to the head of the Administration or designee for consideration of the findings and recommendations, if any. The head of the Administration or designee shall issue a written decision to the complainant and may grant appropriate relief.

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9.4.2 If the decision provides a “probable cause” finding, notice of the decision will be sent to the complainant and respondent(s) and conciliation efforts as outlined in subsection 10 of this policy shall commence.

9.4.2.1 In cases of sexual harassment, the Administration shall make follow-up inquiries for the next twelve (12) months with the complainant to ensure the harassment has not resumed and to ensure that no retaliatory action has been taken in response to the filing of the complaint.

9.4.3 If the decision provides a “no probable cause” finding, notice of the decision will be sent to the complainant and respondent(s). The notice will include appeal rights as outlined in subsection 11 of this policy for the complainant and a non-retaliation notice to the respondent(s).

9.5 A status report of all complaints must be forwarded to the Office of Fair Practices in The Secretary’s Office on a quarterly basis.

10. COMPLAINT WITHDRAWAL

10.1 An individual who files a complaint may withdraw it at any time. The individual must certify that the withdrawal was made without threat, abuse, restraint, intimidation, harassment, interference, coercion or reprisal.

10.2 Within ten (10) work days after a complaint has been withdrawn, the Administration’s Equal Opportunity Officer where the complaint is filed will notify the parties in writing of the withdrawal.

11. CONCILIATION

11.1 After an investigation is conducted and if “probable cause” is found, the Equal Opportunity Manager/Director, Office of Fair Practices, will meet with the complainant and the respondent in an effort to resolve the matter through conciliation.

11.2 If the parties reach an agreement through the conciliation process, a written Conciliation Agreement must be signed by the following parties:

11.2.1 The complainant, indicating acceptance of the agreement;

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11.2.2 The respondent, acknowledging the mandate to perform or cease to perform certain actions;

11.2.3 The Equal Opportunity Manager/Director, Office of Fair Practices, indicating that the agreement is in accord with Equal Opportunity mandates; and

11.2.4 The Administration's Assistant Attorney General for form and legal sufficiency.

11.3 The written Conciliation Agreement will include the agreement to withdraw all pending claims, complaints and lawsuits, and agreement not to file any future claims, complaints and lawsuits, arising out of the same allegations and/or facts.

11.4 Whenever negotiations between the respondent and the complainant break down and it appears impossible to reach an agreement that is satisfactory to all parties, the Equal Opportunity Manager/Director, Office of Fair Practices shall take the action specified in subsections 11.4.1 and 11.4.2.

11.4.1 Advise the complainant and respondent in writing that efforts to conciliate will be terminated unless either the respondent or the complainant requests a resumption of those efforts in writing within ten (10) work days.

11.4.2 Forward the unsigned agreement and the written findings with recommendations for resolution to the Director, Office of Fair Practices, in The Secretary's Office.

11.5 If the conciliation efforts are in The Secretary's Office and negotiations break down and it appears impossible to reach an agreement that is satisfactory to all parties, the complainant shall be notified of the appeal rights as outlined in subsection 11 of this policy.

12. APPEALING THE RECOMMENDATIONS AND DECISION

12.1 If the complainant is dissatisfied with the decision of the head of the Administration or designee, the employee may appeal within ten (10) work days to the Department of Budget and Management, Office of the Statewide EEO Coordinator.

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- 12.2 If the complainant is dissatisfied with the decision, the head of the Administration or designee shall inform the complainant of the right to file a complaint of discrimination with the Maryland Human Relations Commission or the Equal Employment Opportunity Commission.

13. MEDIATION

- 13.1 During the intake of a complaint, the Equal Opportunity Officer will explain the mediation process to the complainant. The complainant will be given the option of having the complaint mediated or investigated.

13.1.1 A complainant who agrees to mediation must sign a Mediation Consent Form.

13.1.2 A complainant who agrees to mediation must sign a statement consenting to the waiver of any time limits imposed on investigations under this policy.

- 13.2 After the respondent has been informed of the filing of the complaint, the Equal Opportunity Officer will explain to the respondent that the complainant has agreed to mediate the complaint and will ask the respondent to agree to mediation. A respondent who agrees to mediation must sign a Mediation Consent Form and a statement consenting to the waiver of any time limits imposed on investigations under this policy.

- 13.3 The Equal Opportunity Officer will schedule and arrange the mediation conference.

- 13.4 If an agreement is reached during the conference, a Pre-Determination Settlement Agreement will be drafted and forwarded to the Administration's Office of the Attorney General for review for form and legal sufficiency. Upon completion of the legal review, the agreement will be signed by the complainant, respondent and the Manager, Equal Opportunity/Director, Office of Fair Practices.

- 13.5 If an agreement is not reached, the complaint will be investigated in accordance with this policy. All information developed during the mediation conference is confidential.

14. FILES

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14.1 A file containing all documents pertinent to complaints shall be established by the appropriate Equal Opportunity/Fair Practices Office.

14.2 The file shall include, but not be limited to, the following:

14.2.1 The original complaint form;

14.2.2 All correspondence relative to the complaint and the subsequent investigation;

14.2.3 Notes of all interviews conducted;

14.2.4 The Investigative Report;

14.2.5 Mediation Documentation, when applicable;

14.2.6 Appeal Documentation, when applicable.

15. RELEASE TIME

15.1 Release time is time away from assigned duties without loss of pay and without charge to earned leave.

15.2 Release time requires prior supervisory approval and may be authorized if the request can be granted without interference to the work schedule. Requests should be made at least 24 hours in advance.

15.3 An employee who initiates a discrimination complaint shall be granted a reasonable amount of release time for processing, participating in, or testifying in any step of the complaint process.

15.4 An employee who has been designated as a witness will be granted a reasonable amount of release time to participate or testify in any step of the complaint process.

16. AUTHORITY

16.1 Title I, Civil Rights Act of 1991

16.2 Title VI, Civil Rights Act of 1964, as amended

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- 16.3 Title VII, Civil Rights Act of 1964, as amended in 1972
- 16.4 Age Discrimination in Employment Act of 1967, as amended in 1978
- 16.5 Americans with Disabilities Act of 1990
- 16.6 Section 504 of the Rehabilitation Act of 1973
- 16.7 Equal Pay Act of 1963
- 16.8 National Labor Relations Act of 1935
- 16.9 Governor's Executive Order 01.01.1995.19
- 16.10 Article 49B of the Annotated Code of Maryland, as amended
- 16.11 Transportation Service Human Resources System Policy 11A-EEO/Affirmative Action
- 16.12 Transportation Service Regulation 11.02.04 – Equal Employment Opportunity
- 16.13 State of Maryland Sexual Harassment Policy and Procedures
- 16.14 Department of Budget and Management Uniform Guidelines on Investigating Sexual Harassment Complaints, 1995
- 16.15 Md. Code Annotated, State Personnel & Pensions Article, Title 5, Subtitle 2
- 16.16 The listing of various federal statutes in this policy is not intended as a waiver of any immunity from suit to which the State or Department may be entitled.